

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

FOR THE DEPARTMENT OF HUMAN SERVICES

In the Matter of the Revocation of the
Family Child Care License of
Carrie Anderson

**FINDINGS OF FACT, CONCLUSIONS
AND RECOMMENDATION**

This matter was heard by Administrative Law Judge Steve M. Mihalchick on September 8, 2006, at the Otter Tail County Human Services Building, Fergus Falls, Minnesota. The hearing record closed on September 8, 2006, at the conclusion of the hearing.

Cherie L. Clark, Assistant Otter Tail County Attorney, 121 West Junius, Suite 320, Fergus Falls, MN 56537, appeared on behalf of Otter Tail County Human Services (County) and the Minnesota Department of Human Services (Department).

Samuel S. Johnson, Johnson Law Office, Ltd., 205 7th Street North, P.O. Box 5, Wahpeton, North Dakota 58074-0005, appeared on behalf of Carrie Anderson (Licensee). The Licensee participated in the hearing by telephone.

STATEMENT OF THE ISSUE

Should the Licensee's family child care license be revoked because she violated statutes and rules that are applicable to family child care licensees?

The Administrative Law Judge concludes that the Licensee did violate statutes and rules that are applicable to her family child care licensure. The Commissioner's order revoking the license should therefore be affirmed.

Based on the evidence in the hearing record, the Administrative Law Judge makes the following:

FINDINGS OF FACT

1. Carrie Anderson (the Licensee) has been licensed to provide family child care in her home, first at 25982 River-N-Woods Circle Drive (River-N-Woods), and later at 1213 North Park Street (Park Street), Fergus Falls, MN

56537-1231, since August 1, 1999.^[1] The Licensee has a Class C-2 family child care license.^[2]

2. Shelly Bartell is a health care licenser in the County's child care licensing unit. Bartell conducts annual visits and inspections of child care homes, does background studies, identifies rule violations and investigates complaints and recommends negative action when appropriate. Bartell is the licenser assigned to the Licensee.

3. The Licensee was married to Patrick Dorsey, from whom she was divorced in 2002.^[3] In 1995, Dorsey entered a guilty plea to misdemeanor assault.^[4]

4. In 1999, Dorsey entered a plea of guilty to domestic assault involving the Licensee.^[5]

5. On July 3, 2002, the Licensee submitted the paperwork for conducting a background check on Dorsey. The paperwork initially noted Dorsey was a "Household member or spouse of applicant," but that was changed to "Substitute Care Provider."^[6]

6. On December 27, 2002, Dorsey was notified that he was disqualified from contact with daycare children. The notice indicated that the disqualification was based on his two convictions for 5th degree assault. He did not appeal the disqualification.^[7] As part of the background study and disqualification process, a risk of harm assessment was performed as part of Dorsey's disqualification. The assessment concluded that Dorsey posed a risk to persons in care. The results were mailed to the Licensee.^[8] At that time, Dorsey was not residing in the daycare premises.

7. After the disqualification, Bartell became aware that Dorsey was occasionally staying at the River-N-Woods day care premises. Bartell inquired of the Licensee about Dorsey's status. The Licensee told Bartell that Dorsey was not a member of the household. Bartell inquired of the Department as to what should be done regarding the situation. The Department informed Bartell that the Licensee should confirm that Dorsey would have no contact with daycare children.^[9] The Licensee wrote a letter confirming that she would not have Dorsey in the home during daycare hours.^[10]

8. On July 25, 2005, the Licensee submitted an application for a change of licensed premises to the County. The change was to move the daycare premises from River-N-Woods to Park Street. Listed as living in the Park Street dwelling were the Licensee, her son, and her daughter. Dorsey was not listed as living in the dwelling. The Licensee also indicated that the dwelling was "owned" (as opposed to rented).^[11]

9. When the Licensee moved from River-N-Woods, Dorsey was the purchaser of record for the Park Street residence. This was done in order to

obtain the financing to purchase the home. The Licensee estimated that Dorsey stayed overnight at the Park Street residence fifteen days per month, but he was not present when daycare children were in the home.^[12]

10. The County's subsequent investigation determined that Dorsey listed the Park Street premises as his residence on his driver's license and vehicle registration. Dorsey was the title owner of the Park Street residence. Dorsey homesteaded the Park Street residence for tax purposes, which included a sworn declaration that the premises were Dorsey's primary place of residence. The Fergus Falls Postmaster also confirmed that Dorsey was receiving his mail at the Park Street premises.^[13]

11. On January 13, 2006, Bartell interviewed the Licensee about Dorsey's use of the Park Street premises as his residence. The Licensee told Bartell that Dorsey spends all his nights at Park Street.^[14]

12. Based on the results of the investigation, Bartell concluded that Dorsey was residing in the Park Street daycare premises. Bartell concluded this was a change from the prior situation where Dorsey was considered to be an occasional visitor to the River-N-Woods residence. Bartell required the Licensee to complete the background study paperwork on Dorsey.^[15] The Licensee submitted the updated form, listing Dorsey as residing in the daycare premises, on January 13, 2006.^[16]

13. The 2006 background study on Dorsey, concluding that he had a disqualification, was received by the County on January 18, 2006. Bartell issued a correction order for the Licensee citing Minn. Rules 9502.0335, subp. 11.C. and 9502.0375, subp. 2.A. (failing to report new household member). The Licensee indicated that the violation was corrected by Dorsey's being "Not in home during daycare hours."^[17]

14. On January 20, 2006, the County recommended to the Department that a Temporary Immediate Suspension of Licensee from providing daycare be imposed. The County based the recommendation on the continued residence of Dorsey at the licensed premises. The County noted that Dorsey's 1999 gross misdemeanor assault conviction had been a plea bargain down from a first degree sexual assault charge. Using the preponderance standard, the County maintained that this charge results in a permanent bar to Dorsey residing in a licensed home.^[18] The disqualification of Dorsey was based solely on the two fifth degree assault convictions. No further disqualification has been brought against Dorsey regarding any underlying acts related to the 1999 conviction.^[19]

15. The Licensee discontinued providing daycare by the end of January 2006.^[20]

16. On February 9, 2006, the Department issued an Order of Revocation of the Licensee's family child care license. The Order stated that the

Licensee had knowingly withheld relevant information from and given false or misleading information to the County, that the Licensee had failed to remove a disqualified individual from the daycare premises as previously ordered, and that the Licensee had failed to report a change in household membership. Based on the conclusion that the health, safety, and rights of children in care were at risk, the Department revoked the Licensee's license to provide family child care. The Order provided information about the Licensee's appeal rights.^[21] The Licensee filed a timely appeal of the Order of Revocation, and this contested case proceeding ensued.^[22]

17. The Licensee has participated as a provider in the Minnesota Family Investment Program (MFIP). As a MFIP provider, the Licensee would receive payments from the County for child care received by participant families. As part of the MFIP, the Licensee was obligated to accurately report days that participant children were in care. On January 31, 2006, the Licensee received a Notice of Intentional Program Violation for billing the County under the MFIP for days that the Licensee was unavailable to provide child care. The Licensee waived her right to a hearing and admitted to the violation. As a result of the admission, the Licensee was disqualified from the MFIP for a period of one year.^[23] The Licensee admitted receiving improper payments in the amount of \$140.00 and \$238.50. These improper payments were described as arising through inaccurate paperwork rather than any effort to charge MFIP for services not provided. The Licensee agreed to collection of the overpayments through revenue recapture.^[24]

18. On February 15, 2006, the Department notified the Licensee that she was disqualified. The Licensee was disqualified on the basis of the MFIP violation. The Department determined that the MFIP violation was an act which meets the definition of wrongfully obtaining assistance, which is a disqualifying characteristic under Minn. Stat, § 245C.14. The Licensee requested reconsideration of the disqualification determination.

19. On July 12, 2006, the Department issued a Notice of Disqualification Not Set Aside and Amended Order of Revocation (Amended Order) regarding the Licensee's family child care license. The Amended Order concluded that the Licensee's conduct met the preponderance standard for wrongfully obtaining assistance which disqualifies the Licensee for seven years under Minn. Stat. § 245C.15, subd. 4. Considering the factors set out in Minn. Stat. § 245C.22, subd. 4, the Department concluded that the disqualification would not be set aside. The Amended Order repeated the basis for the earlier revocation (knowingly withholding relevant information from and giving false or misleading information to the County, failing to remove a disqualified individual from the daycare premises, and failing to report a change in household membership). Based on the conclusion that the health, safety, and rights of children in care were at risk, the Department revoked the Licensee's license to provide family child care. The Amended Order noted that the Licensee had filed

an earlier appeal and that the scope of this contested case hearing would include both the revocation and the Licensee's disqualification.^[25]

20. These Findings are based on all of the evidence in the record. Citations to portions of the record are not intended to be exclusive references.

21. To the extent that the Memorandum that follows explains the reasons for these Findings of Fact and contains additional findings of fact, including findings on credibility, the Administrative Law Judge incorporates them into these Findings.

22. The Administrative Law Judge adopts as Findings any Conclusions that are more appropriately described as Findings.

Based on these Findings of Fact, the Administrative Law Judge makes the following:

CONCLUSIONS

1. Minnesota law gives the Administrative Law Judge and the Commissioner authority to conduct this contested case proceeding and to make findings, conclusions, and recommendations or a final order, as the case may be.^[26]

2. The Department and the County gave proper and timely notice of the hearing, and they have also fulfilled all procedural requirements of law and rule so that this matter is properly before the Administrative Law Judge.

3. In this proceeding, the Commissioner has the burden to demonstrate that reasonable cause existed for the revocation of the Licensee's family child care license, as provided in Minn. Stat. § 245A.08, subd. 3. If the Commissioner makes that showing, the burden of proof shifts to the Licensee to demonstrate by a preponderance of the evidence that she was in full compliance with the laws and rules that the Commissioner alleges were violated.

4. The purpose of family child care licensure statutes and rules is to protect the care, health and safety of children.^[27]

5. In order to accomplish that purpose, Minn. Stat. § 245A.07, subd. 3, provides in part:

Subd. 3. License suspension, revocation, or fine. (a)

The commissioner may suspend or revoke a license, or impose a fine if a license holder fails to comply fully with applicable laws or rules, if a license holder or an individual living in the household where the licensed services are provided has a disqualification which has not been set aside under section 245C.22, or if a license holder knowingly withholds relevant information from or gives false or misleading information to the commissioner in connection with an application for a license, in connection with the background study status of an individual, or during an investigation. . . .

6. The Commissioner must conduct a background study on individuals “age 13 or older living in the household where the licensed program will be provided”^[28] or “who, without providing direct contact services at a licensed program, may have unsupervised access to children ... receiving services from a program, when the commissioner has reasonable cause.”^[29]

7. The term “individual living in the household” as it appears in Minn. Stat. §§ 245A.07, subd. 3, and 245C.03, subd. 1(a) (2), means an individual who is more than an occasional visitor to a home. After July 2005, Patrick Dorsey was an individual living in the Licensee’s household within the meaning of Minn. Stat. §§ 245C.03, subd. 1(a) (2).^[30] For that reason, he was a person on whom the Commissioner was required to conduct a background study.

8. A license holder's failure or refusal to cooperate with the Commissioner in conducting background studies or making disqualification determinations is reasonable cause to disqualify a subject, deny a license application, or immediately suspend or revoke a license or registration.^[31]

9. The Licensee failed to obtain a background study on Patrick Dorsey until required to do so by the County. As a consequence of the failure to obtain the study, the Licensee has not been in full compliance with applicable licensure statutes and rules.

10. Minn. R. 9502.0375, subp. 2, requires a licensed day care provider to inform his or her licensing agency within 30 days of any change in the regular membership of the household within the day care residence. The Licensee failed to inform her licensing agency within 30 days of changes in the regular membership of the household within her day care residence and failed to accurately identify all the members of her household at the time of her application to transfer the daycare premises. As a consequence, the Licensee has not been in full compliance with applicable licensure statutes and rules.

11. Minn. Stat. §§ 245C.14, subd. 4(a) and 245C.15, subd. 4, provide that a person who has been convicted of, or admitted to misdemeanor level wrongfully obtaining assistance^[32] must be disqualified from having direct contact with or access to a person receiving services from a license holder.

12. An individual who is disqualified on that basis cannot have direct contact with children in a day care program for a period of seven years.^[33]

13. The Licensee admitted to conduct that equates to misdemeanor level wrongfully obtaining assistance. The Licensee has not shown that her resulting seven-year disqualification should be set aside.

14. The Licensee has established by a preponderance of the evidence that she did not knowingly withhold relevant information from or give false or misleading information to the County and the Department in connection with the status of Patrick Dorsey as residing on the premises. The Licensee has shown that she has been in full compliance with Minn. Stat. § 245A.07, subd. 3, on that issue.

15. Minn. Stat. § 245A.07, subd. 3, provides that “[w]hen applying sanctions authorized under this section, the commissioner shall consider the nature, chronicity, or severity of the violation of law or rule and the effect of the violation on the health, safety, or rights of persons served by the program.”^[34]

16. In making its determination to order revocation of the Licensee’s license to provide family child care, the Department gave appropriate consideration to the nature, chronicity, or severity of the Licensee’s violations of law and rule and the effect of those violations on the health, safety, or rights of persons served by the program.

17. The Administrative Law Judge adopts as Conclusions any Findings that are more appropriately described as Conclusions.

18. The Memorandum that follows explains the reasons for these Conclusions, and the Administrative Law Judge therefore incorporates that Memorandum into these Conclusions.

Based upon these Conclusions, and for the reasons explained in the accompanying Memorandum, the Administrative Law Judge makes the following:

RECOMMENDATION

The Administrative Law Judge respectfully recommends that the Order revoking Carrie Anderson’s license to provide child care be AFFIRMED, that the disqualification of Carrie Anderson be AFFIRMED, and that the disqualification not be set aside.

Dated: October 6, 2006

/s/ Richard C. Luis for S.M.M.

STEVE M. MIHALCHICK
Administrative Law Judge

Reported: Taped, 1 tape
No transcript prepared

MEMORANDUM

The Licensee did not contest the allegations regarding her behavior and did not raise any challenge to the procedure followed by the County and the Department. The Licensee maintained that disqualification was inappropriate and revocation was too severe a penalty. The Licensee proposed that her license be suspended for a period of two years, to coincide with the expiration of Dorsey's disqualification.^[35] Such a change in penalty would allow the Licensee to resume caring for children or to initiate adult foster care sooner [if the Licensee's disqualification is set aside].

Discipline is warranted in this matter. But the Licensee has shown that she discussed Patrick Dorsey's presence at the daycare premises with the County in 2002. At that time, the Department suggested that the presence of Dorsey was not a problem, so long as there was no contact with daycare children. The Licensee complied with the standards as they had been expressed to her. There is no indication in this record that the change in standards triggered by the transfer application and the longer periods of time spent in the residence by Dorsey was understood by the Licensee. Under these circumstances, while failing to report Dorsey as a member of the household is a violation, imposing a lesser sanction than revocation is appropriate.

Regarding disqualification, the Licensee has not shown that the factors to assess the risk of harm support her contention that her disqualification should be set aside at this time. The Legislature has determined that offenses such as wrongfully obtaining assistance are appropriate for disqualification. There is the possibility that the disqualification could be set aside at some future time. There have been instances where demonstrated good conduct over a period of years has resulted in a set aside of disqualification even where the amount of public assistance involved was substantial.^[36] A similar demonstration of ongoing good conduct would place this matter in a similar position.

In light of the foregoing, the ALJ concludes that the Licensee has committed several substantial violations of applicable licensure statutes and rules that are appropriate for sanction. The disqualification is required by statute and the Licensee has not demonstrated that the disqualification should be set aside at this time.

S.M.M.

NOTICE

This report is a recommendation, not a final decision. The Commissioner of Human Services will issue a final decision after reviewing the administrative record, and he may adopt, reject or modify the Administrative Law Judge's Findings of Fact, Conclusions, and Recommendations. The parties have 10 calendar days after receiving this recommended decision in which to file any exceptions to the report with the Commissioner.^[37] Parties should contact the office of Cal R. Ludeman, Commissioner, Department of Human Services, 444 Lafayette Road, St. Paul, MN 55155, (651) 296-2701 to find out how to file exceptions.

If the Commissioner fails to issue a final decision within 90 days of the close of the record, this report will constitute the final agency decision under Minn. Stat. § 14.62, subd. 2a. The record closes upon the filing of exceptions to the report and the presentation of argument to the Commissioner, or upon the expiration of the deadline for doing so. The Commissioner must notify the parties and the Administrative Law Judge of the date on which the record closes.

Under Minnesota law, the Commissioner of Human Services is required to serve his final decision upon each party and the Administrative Law Judge by first-class mail.

^[1] Amended Ex. A, Ulschmid Summary, at 1.

^[2] Ex 15.

^[3] Testimony of Licensee.

^[4] Ex. 17.

^[5] Ex. 18.

^[6] Ex. 4.

^[7] Exs. 5 and 7.

^[8] Ex. 6.

^[9] Testimony of Bartell.

^[10] Ex. 8.

^[11] Ex. 13.

^[12] Testimony of Licensee.

^[13] Exs. 9-12.

^[14] Testimony of Bartell.

^[15] Testimony of Bartell.

^[16] Ex. 14.

^[17] Ex. 15.

^[18] Ex. 3.

- [19] Ex. 5.
- [20] Testimony of Licensee.
- [21] Ex. 2.
- [22] Ex. 1.
- [23] Ex. 19.
- [24] Testimony of Licensee.
- [25] Amended Order.
- [26] Minn. Stat. §§ 14.50, 14.57, 14.69; 245A.05 through 245A.08; and Ch. 245C.
- [27] Minn. Stat. § 245A.07, subd. 1; Minn. R. 9502.0325.
- [28] Minn. Stat. § 245A.03, subd. 1(a) (2).
- [29] Minn. Stat. § 245A.03, subd. 1(a) (6).
- [30] *Id.*
- [31] Minn. Stat. § 245C.09, subd. 1.
- [32] In violation of Minn. Stat. § 256.98.
- [33] Minn. Stat. §§ 245C.14, subd. 4(a) and 245C.15, subd. 4.
- [34] Minn. Stat. § 245A.07, subd. 1.
- [35] Testimony of Licensee. While the County has maintained that Dorsey is subject to a permanent disqualification, he must be formally determined to be disqualified on that basis, with the appropriate notice and opportunity to challenge the disqualification, before such a permanent disqualification can be relied upon.
- [36] *ITMO the Denial of the License of Charlene Mento to Provide Family Childcare and the Disqualifications of Charlene Mento and Nicholas Mento*, OAH Docket No. 12-1800-15372-2 (Commissioner's Findings of Fact, Conclusions and Order issued November 13, 2003).
- [37] Minn. Stat. § 14.61.